Case and Comment.

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS.

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED.

LEGAL NEWS NOTES AND FACETIÆ.

VOL. 2. MARCH, 1896. No. 10.

CASE AND COMMENT.

Monthly. Subscription, 50 cents per annum postpaid.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

Branch Offices: { New York, 177 Broadway. Chicago, Rand-McNally Bldg. Boston, 10 Tremont Street.

Entered at postoffice at Rochester, N. Y., as second-class mail matter.

Henry Billings Brown.

On the appointment of Mr. Justice Brown by President Harrison on December 29, 1890, to fill the large place on the bench of the Supreme Court of the United States which was left vacant by the death of Mr. Justice Miller, the "American Law Review" said: "Mr. Justice Brown now succeeds to a position which his learning, experience, and natural talents qualify him to fill. He has been for fifteen years holding the position of a Federal judge, doing duty most of the time in the Federal Circuit Courts in various districts from Michigan to Tennessee. During that time he has written many scholarly opinions which have marked him out as well deserving of such a promotion." The "Review" also mentions a personal letter from Judge Brown, in which he declined to have his name considered with respect to an appointment to the Supreme Court when the appointment of Mr. Justice Brewer was under consideration, and the fact that a similar letter from Judge Brewer had also been written declining to be a candidate for the place against Judge Brown. These letters show a fitness for high duties that is not possessed by all who are learned in the law, and add to the satisfaction felt in the appointments of these men to that high office.

Mr. Justice Brown is a native of South Lee, Mass., where he was born March 2, 1836. After graduating from Yale in 1856, with Chauncey M. Depew as a classmate, he studied and traveled for a year in Europe. On returning, he spent some time in a lawyer's office in Connecticut and then in the law schools of both Yale and Harvard. He went to Detroit in 1859 and was admitted to the bar there in the following year. He was appointed Deputy United States Marshal in 1861, and afterwards served some years as Assistant United States District Attorney. In 1868, at the age of thirty-two, he was appointed by Governor Crapo to fill a vacancy on the bench of the Wayne County Circuit Court. President Grant, in 1875, appointed him United States District Judge for the Eastern District of Michigan. About this time he issued the volume of Brown's "Admiralty Reports." The degree of LL. D. was conferred upon him in 1887 by the University of Michigan and by Yale University in 1891. He was married in 1864 to Miss Caroline Pitts of Detroit.

Mr. Justice Brown is not one of those who give life entirely to professional and official business. Questions which touch human welfare and progress in any way get his attention and earnest thought. In his address before the American Bar Association in 1893, he discussed the question of the distribution of property and the proposed remedies for its inequalities. In 1889, before the same association, he made an address on judicial independence. At Yale law school last year in an address on "The Twentieth Century," he said, it is not improbable that social disquietude will result in gradual enlargement of the functions of government and the ultimate control of natural monopolies, while he specified as the most prominent perils which menace us "municipal misgovernment, corporate greed, and the tyranny of labor." Before the Ohio Bar Association in 1892, speaking of the usefulness of bar associations, he said: "The demand of this age is

for manly and fearless men who have the interests of the profession and of the public at heart; who have the moral courage to call a spade a spade, and who are not so tied up by political and religious affiliations that they are afraid to speak their own minds in any assembly, however unpopular their ideas may be." That he is not afraid to speak his own mind upon any important matter is clearly shown by his various and vigorous public utterances. A minor illustration lately given was his criticism of legal delays, in speaking to the Harvard Law School Association last June, when he said, among other things: "I utterly refuse to believe that there is not something radically wrong in any administration of the law which requires a month to be consumed in the impaneling of a jury."

In his work on the bench, Mr. Justice Brown is by no means confined to any branch of the law, but it will be seen by examining the reports that a large percentage of the patent and admiralty cases fall to his share in the allotment of opinions.

When Mercy Seasons Justice.

Justice loses none of its divine quality by regarding the welfare of the person to be punished; punishment by which his welfare is disregarded does not deserve to be called justice. Vindictiveness, or an attempt to include the element of retribution, alloys and degrades justice. But there is much more to consider than the welfare of the criminal; the great aim is the prevention of other crimes. Even when punishment is not needed to prevent renewed wrongdoing by one who has been convicted, it may be imperatively demanded to show that crime cannot be indulged in with impunity.

A recent Washington case, in which a young woman of good family is punished for manslaughter by a fine and a few moments merely technical imprisonment, has caused widespread comment. Probably she needed no punishment to prevent a repetition of her crime. But what is looked upon as a farcical penalty brings law into contempt, especially when, as in this case, there is a suspicion of partiality and race discrimination. Many people cannot be made to believe that the sentence would have been the same if the colored boy who was killed by the recklessness or passion of this prominent young white woman had killed her under the same circumstances. The general belief that he would have been punished far more severely for the same offense will help to breed that dislike and distrust of courts, which to some extent unfortunately exists among the less intelligent portion of the people.

While "earthly power doth then show likest God's when mercy seasons justice," and mercy blending with justice gives it greater efficiency to prevent and remedy wrongs, it is also true that favoritism in the guise of mercy betrays justice, breeds evil, and incurs a contempt that deepens as the level of civilization rises. Condemnation of favoritism steadily grows stronger while the people at the same time grow more merciful. The Washington judge will be severely criticised only by those who believe that he was partial, and not merely merciful.

Making People Good by Law.

Most of those who in pretense of reasoning persistently repeat that you cannot make people good by law make an unconscious exhibition of mental vacuity. Some who say it may fully understand its emptiness and attempt by a trick of the demagogue to deceive the more obtuse. Analyze it, and what does it mean? Surely it is not merely a denial of the power to change the moral nature or purposes of an individual by legislative fiat. Nor, on the other hand, can it mean that laws against wrongdoing are altogether ineffectual. If so, theft, burglary, and murder are only the result of a condition which laws cannot change and against which laws are useless. Statements so absurd as these do not need discussion and are not made by sane people. Evidently many people think they mean something when they smartly announce that you cannot make people good by law. They seem to have some confused idea that, while law may prohibit and punish crimes by violence, or perhaps any other crimes against unwilling victims, it has no business to interfere with voluntary indulgence in vices.

If that doctrine is true, it should be more clearly understood. It will require the abandonment of an important field of law. For instance, all laws against gambling and gambling houses must be repealed. So must all the existing laws against sexual crimes of every sort when not accompanied by violence. Laws to protect children from enticement to evil belong in the same category and must go to the same limbo. Vice, monstrous, brazen, and revolting, could then make public exhi-

Yours.
H. B. Brown.

PORTRAIT SUPPLEMENT.—"CASE AND COMMENT."
THE LAWYERS CO-OPERATIVE PUBLISHING CO.,
ROCHESTER, N. Y.
NEW YORK: 177 BROADWAY. BOSTON: 10 TREMONT ST. CHICAGO: RAND-MCNALLY BLDG.

bitions beyond the language of decency to describe, and so long as the participants were all acting voluntarily, without violence or compulsion, the law could not interfere. The iniquities of ancient Sodom might become the sights of the street corner and of the public parks, but, so long as all who engaged therein were pursuing their own pleasure in their own way, without doing violence to any one else, puritanical people could not interfere with their exercise of personal liberty.

Laws to restrain vice and to prevent the debauchery of public morals by those who seek personal gain in the ruin of their fellows are the laws usually attacked by this senseless aphorism that you cannot make people good by law. It would be too much to suppose that such laws would be always judicious, but to attack their principle is to deny that law can do anything to protect the weak, the ignorant, and the unstable in character from the demoralizing influences and seductive temptations with which for gain the wicked surround the weak. It is to wipe out of the law its most essential and beneficent portion, which is preventive rather than punitory. It is to deny that public policy can impose any restriction upon personal license or protect society from degradation. But probably none of those who are fond of saying that you cannot make people good by law would think of denying so much as this. They ought to be forced to fathom the meaning of their own words. If they should they would realize that the flippant phrase infallibly reveals either shallowness of thought or sympathy with vice.

Right to Abandon Contract Because of Other Party's Default.

One of the most effective means of self-defense which a party to a contract has in case of the other party's default is to discontinue performance on his own part. In the earlier cases this right was made to depend on the covenants of the respective parties being dependent, and performance by the defaulting party being a condition precedent to performance by the party wishing to abandon. But the modern cases have established the doctrine that if the contract is indivisible, and the party wishing to rescind retains no benefit under it, he may do so without liability, upon the other party's becoming in default. The default however must be such as to render the object of the contract unattainable. For a partial or trivial default the remedy must be by action upon the stipulations of the contract itself. In addition to simple cases of rescission without action by either party, there are many instances where the party wishing to rescind has done something under the contract for which the contract provides him no compensation, unless he completes performance on his part. The default of the other party renders further performance by him undesirable. In such cases, if the default be such as necessarily to prevent the aggrieved party from performing on his part according to the terms of the contract, he may abandon it and recover the value of services rendered, of property delivered, or recover back money paid.

Some of the courts seem to be inclined to hold that mere neglect or refusal by one party to perform will justify abandonment by the other. But it would seem that the doctrine must be limited to cases where the nonperformance defeats the object of the contract. Still another class of cases is that where the aggrieved party, in addition to abandonment, seeks damages for the other party's breach. One of the latest cases which have applied the law to such circumstances is Lake Shore & M. S. R. Co. *v.* Richards (Ill.) 30 L. R. A. 33, in which it is held that a breach which will justify abandonment and suit for damages need not be such as to render further execution of the contract impossible, but that refusal to be bound will in legal effect be a prevention of performance by the other party. According to that case there is little difference in what is necessary to create the right between the several classes of cases, the remedy being largely dependent upon the circumstances existing at the time of default. And the doctrine of that case is well sustained by the authorities gathered in a note to it, which reviews the whole subject of rescission and abandonment, on account of the other party's default.

If the contract is what is known as a continuing contract to be performed in instalments, the weight of authority is that a default as to one instalment will authorize an abandonment of the entire contract, although the late New Jersey case of Gerli *v.* Poidebard Silk Mfg. Co. 30 L. R. A. 61, holds that when the seller of goods has agreed to deliver them in instalments, and the buyer has agreed to pay the price in instalments which are proportioned to and payable on the delivery of each instalment, default of either party with reference to any one instalment will not ordinarily entitle the other party to abrogate the contract.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 30, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Banks.

A bank which cashed a check on which there was an accommodation indorsement, and sent it to a correspondent for collection, was held, in Comer *v.* Dufour (Ga.) 30 L. R. A. 300, to have no right to recover back the money paid on the check because a check taken by the correspondent bank from the drawee proved worthless because there was delay in presenting it; and this was held although the original check was reclaimed and duly protested after the drawee's check had been dishonored.

A bank which guaranteed the payment at a clearing house of the check of another bank that was not a member, was held, in Voltz *v.* National Bank, 158 Ill. 532, 30 L. R. A. 155, to become an assignee of such a check which it paid after the other bank had made an assignment for creditors, where the payment was made in pursuance of the guaranty, and in paying the check it was held not to be a mere volunteer, but to have by subrogation the rights of the party to whom payment was made.

Bills and Notes.

A new question in the law of negotiable paper in respect to the effect of an indorsement by one to whom commercial paper has been transferred by mere assignment without recourse is decided in De Hass *v.* Dibert, 70 Fed. Rep. 227, 30 L. R. A. 189, by holding that the assignee may by indorsement incur the liabilities of an indorser of negotiable commercial paper, and that the negotiable character of the instrument is not destroyed by an assignment without recourse.

Carriers.

A railroad company drawing a special train of cars for a circus, loaded with animals and other property as well as persons connected with the circus, and running on special time under a special contract by which the risk of accident is assumed by the owner of the circus, is held, in Chicago, M. & St. P. R. Co. *v.* Wallace (C. C. App. 7th C.) 30 L. R. A. 161, to be a private carrier as distinguished from a common or public carrier; and with the case other authorities on this question are presented.

While a railroad company owes no duty to a passenger as such after he has reached his destination and alighted from the train, yet it is held, in Grantz *v.* Rio Grande Western R. Co. (Utah) 30 L. R. A. 297, that the company is liable for an assault on a person, made by employees aided by strangers, while he was in one of its station houses in a sparsely settled country and the ticket agent, who represented the company, was present and made no effort to interfere.

Charities.

A gift to rector, church wardens, and vestrymen of an unincorporated religious society in trust to pay the salary of the rectors of the parish forever, or for church purposes only, was held to be a charitable use, in Alden *v.* St. Peter's Parish, 158 Ill. 631, 30 L. R. A. 233, and such a gift was held to be unaffected by a statute limiting the ownership of property by incorporated church societies.

Contracts.

A stipulation against liability for negligence of a railroad company setting fire to buildings erected on its right of way under a lease is held valid in Hartford Fire Ins. Co. *v.* Chicago, M. & St. P. R. Co. 70 Fed. Rep. 201, 30 L. R. A. 193, notwithstanding a claim that this was a violation of public policy.

A contract to furnish support for a man and his wife during life was held, in Tuttle *v.* Burgett, 50 Ohio St. 68, 30 L. R. A. 214, to give the persons to be supported an option as to the place in which they would receive the support, without obliging them to receive it at the home of the other party. Such a contract secured by a mortgage was held enforcible after the death of the persons to be supported, in order to pay the expense of their support, which had been furnished by another party.

The abandonment or renunciation of a contract by reason of a default of the other party is a question of much importance, and such right is asserted in Lake Shore & M. S. R. Co. *v.* Richards, 152 Ill. 59, 30 L. R. A. 33, where the other party, without rendering further execution of the contract impossible, refuses to treat it as binding upon himself. Another phase of this question appears in Gerli *v.* Poidebard Silk Mfg. Co. (N. J.) 30 L. R. A. 61, where it is held that default by either party with reference to any one instalment of goods to be delivered in instalments for which payment is to be made separately will not ordinarily entitle the other party to abrogate the contract. The general question of the right to rescind or abandon a contract because of the other party's default is presented, with a review of numerous cases, in a note to these cases in 30 L. R. A. 33.

Corporations.

An interstate corporation having but one board of trustees, whether it was formed by consolidation or otherwise, is held, in Missouri Pac. R. Co. *v.* Meek, 69 Fed. Rep. 753, 30 L. R. A. 250, to be a domestic corporation in each state, and not a foreign corporation in any state in which it has been given corporate functions.

Election Districts.

The power to divide counties or towns and erect new counties and towns, or to change their boundaries, which is conferred by the general grant of legislative power to be exercised in the discretion of the legislature, is held, in People, Henderson, *v.* Board of Supervisors, 147 N. Y. 1, 30 L. R. A. 74, to be limited by the provision of the New York Constitution fixing a Senate district as composed of specified counties. No change of county boundaries is allowed to change the boundaries of a Senate district. The result is that the annexation of a portion of Westchester county to the city and county of New York is held valid so far as it affects municipal burdens and municipal rights, but to leave the annexed territory still a part of the Senate district which consisted of Westchester county, and also a part of that county for the purpose of division into assembly districts.

Executors and Administrators.

A promissory note given by an administrator for a debt of the testator without any new consideration and when the time to file claims has expired, and when the probate court has never allowed the claim or ordered it to be paid, is held to be without consideration, in Germania Bank *v.* Michaud (Minn.) 30 L. R. A. 286, and the note is held ineffectual either against the estate or the administrator personally.

Husband and Wife.

The right of a man during coverture to give away to his children absolutely the bulk of his property is sustained in Small *v.* Small (Kan.) 30 L. R. A. 243, as against a *post mortem* claim of his widow, although the known effect of the gift was to deprive her of the fair share of the property which would otherwise have fallen to her.

Injunction.

The fact that a judgment at law was rendered without jurisdiction is held, in John V. Farwell Co. *v.* Hilbert (Wis.) 30 L. R. A. 235, to be insufficient ground for an injunction against its enforcement, unless the judgment is shown to be unjust or inequitable. In this case the judgment was by confession, and a note on injunction against confession judgments accompanies the case.

An injunction to restrain the exercise of governmental powers under an unconstitutional statute is held, in Green *v.* Mills, 69

Fed. Rep. 852, 30 L. R. A. 90, to be beyond the power of equity to grant on behalf of individuals who assert no threatened infringement of rights of property or civil rights. This was the case of an injunction sought against registration of voters on an alleged unconstitutional statute.

Injunction to prevent the sale under execution of exempt property which has no special value to plaintiff is denied, in Parsons *v.* Hartman, 25 Or. 547, 30 L. R. A. 98, on the ground that the statutes provide a remedy at law for the recovery of the property and of damages for its seizure. With this case in 30 L. R. A. 98, is a note in which the surprisingly large number of cases on the question of injunction against execution sales or other proceedings under final process have been collated.

Insurance.

Under a statute prohibiting the defense of suicide in an action for life insurance, unless it is shown that the insured contemplated suicide when he applied for the policy, it was held, in Ætna Life Ins. Co. *v.* Florida, 69 Fed. Rep. 932, 30 L. R. A. 87, that the insured can be held to have contemplated suicide only when he intended or had resolved to commit suicide at that time.

That death by hanging at the hands of a mob is an accident was decided in Fidelity & C. Co. *v.* Johnsor (Miss.) 30 L. R. A. 206, in determining the meaning of a policy against injuries through external, violent, and accidental means.

To similar effect, it is held, in Lovelace *v.* Travelers' Protective Asso. 126 Mo. 104, 30 L. R. A. 209, that death was accidental where a person was shot by another whom he was trying to eject by force from a hotel office. In a note with these cases, in 30 L. R. A. 206, are found the other authorities on the question, What constitutes an accident within the meaning of an accident insurance policy?

Legislature.

A committee appointed by the general assembly to make an examination and find facts with authority to report after adjournment of the assembly is held, in Commercial & F. Bank *v.* Worth (N. C.) 30 L. R. A. 261, to have no right to *per diem* or mileage after such adjournment, unless the resolution appointing it provides therefor.

An attorney for a legislative committee, appointed to make an examination and find facts from evidence, is held, in Purnell *v.* Worth (N. C.) 30 L. R. A. 262, not to be a "necessary expense" for the committee.

Master and Servant.

Violation of the statute by hiring a boy under twelve years of age to work in a mine is held, in Queen *v.* Dayton Coal & I. Co. (Tenn.) 30 L. R. A. 82, to constitute negligence *per se* which will sustain a civil right of action whenever the boy sustains injuries in consequence of the employment.

Mechanics' Liens.

The constitutionality of the Minnesota log lien law is sustained in Brown *v.* Markham (Minn.) 30 L. R. A. 84, where it was attacked on the ground that rendering judgment against the property without notice to the owner deprived him of the property without due process of law, but it was held that the judgment was not conclusive against such owner.

Municipal Corporations.

The power of the legislature to impose financial burdens upon a city without its consent is sustained in Simon *v.* Northup (Or.) 30 L. R. A. 171, in case of a statute providing for the acquisition of bridges and ferries by the city. The case also holds that the legislature can transfer the control of public bridges and ferries from the city to county authorities.

Another illustration of the legislative power over cities is given in Johnson *v.* San Diego (Cal.) 30 L. R. A. 178, in which the power of the legislature is sustained, to change and readjust the burden of municipal indebtedness of a city after an apportionment had been once made, when the city was divided.

The reasonableness or unreasonableness of municipal ordinances is held, in Hawes *v.* Chicago, 158 Ill. 653, 30 L. R. A. 225, to be subject to review by the courts. An ordinance compelling a new cement sidewalk to be laid within a few months after a good plank walk was laid, while that was in good repair, is held to be unreasonable and oppressive.

The power of a city to construct a railroad bridge or viaduct over railroad tracks where it is necessary for the safety and convenience of the public is sustained in Argentine *v.* Atchison, T. & S. F. R. Co. (Kan.) 30 L. R. A.

255, and the cost of such a structure can be divided between the city and railroad company when that is just.

The purchase of city bonds by commissioners of the sinking fund of the city is held, in Kelly v. Minneapolis (Minn.) 30 L. R. A. 281, to be an excess of their authority, even if not expressly prohibited by statute, because it is radically inconsistent with the essential character of the sinking fund.

Abolishing a judicial district by transferring all the counties comprising it to another district is held to be within the power of the legislature, in Aikman v. Edwards (Kan.) 30 L. R. A. 149.

Parent and Child.

An adoption of an illegitimate child, as distinguished from legitimation, is considered in Murphy v. Portrun (Tenn.) 30 L. R. A. 263, holding that on a petition asking for both, a decree may be rendered for adoption alone, and that the next of kin of the father of an illegitimate child that has been adopted with capacity to inherit, but not legitimated, have no inheritable blood with respect to such child.

Railroads.

The failure of an engineer to perform his duty to maintain a reasonably vigilant lookout along the track in front of a train is held, in Pickett v. Wilmington & W. R. Co. (N. C.) 30 L. R. A. 257, to render the railroad company liable for killing a human being lying on the track apparently helpless from any cause, when the engineer could have seen him by the exercise of ordinary care. The court applies the rule that he who has the last clear chance, notwithstanding the negligence of the adverse party, is considered solely responsible for injuries resulting from his failure to exercise reasonable care.

Receivers.

Receivers' certificates constituting a lien prior to that of a first mortgage given for money borrowed to carry on the corporate business are held, in Hanna v. State Trust Co. 70 Fed. Rep. 2, 30 L. R. A. 201, to be beyond the power of the court to authorize in case of a private corporation, such as a land and water storage company.

Street Railways.

The speed of street cars is held, in Bly v. Nashua Street R. Co. (N. H.) 30 L. R. A. 303, to be subject to a general regulation that "no person shall ride through any street" in the compact part of a town faster than five miles an hour.

Taxes.

The exemption from taxation of property used exclusively for charitable or benevolent purposes is held, in Portland Hibernian Benevolent Society v. Kelly (Or.) 30 L. R. A. 167, to be inapplicable to property used for other and different purposes, although the revenue therefrom was devoted exclusively to charitable or benevolent objects.

The direct inheritance tax law of Ohio is held invalid in State, Schwartz, v. Ferris, 53 Ohio St. 1, 30 L. R. A. 218, because of its exemption of estates not exceeding $20,000 in value, and taxing estates of different size by different rates.

Telegraphs.

Penalties under state law for negligence in transmitting telegrams are held, in Western Union Teleg. Co. v. Howell, 95 Ga. 194, 30 L. R. A. 158, to be recoverable notwithstanding the message was to a point in another state where the negligence complained of occurred entirely within the state.

Trademarks.

A novel question as to trademarks or trade-names is decided in Weinstock, L. & Co. v. Marks (Cal.) 30 L. R. A. 182, sustaining a mandatory injunction to require distinguishing marks for a place of business that had been made to imitate that of a rival.

Trusts.

A trust for the reorganization of a railroad by bondholders after a foreclosure sale is held, in Indiana, I. & I. R. Co. v. Swannell, 157 Ill. 616, 30 L. R. A. 290, to continue on confirmation of the sale to a trustee and the vesting in him of title to the property, which he purchased in pursuance of the trust, in favor of those who fail to comply with the conditions of the trust and who have released him from liability and have accepted a return of their bonds and a portion of the assessments paid.

Voters and Elections.

An honest attempt to follow the directions of a ballot law requiring a cross to be made in the appropriate margin or place opposite the name is held necessary to appear, in Parker *v.* Orr, 158 Ill. 609, 30 L. R. A. 227, in order to permit the ballot to be counted; but where such intent appears, a failure of exact compliance with the law is held not to be fatal.

Waters.

The discoverer of a flow of percolating waters on public lands is held, in Sullivan *v.* Northern Spy Mining Co. (Utah) 30 L. R. A. 186, to acquire the right, by digging wells, improving them, and constantly using the water for a beneficial purpose, to take the water from such wells as against one who by subsequent location acquires title to the land. A note to the case presents the other authorities on appropriation of percolating waters on public lands.

The rights of locators of a ditch for irrigation to the use of waste water after supplying prior appropriators are held, in Hewitt *v.* Story (C. C. App. 9th C.) 30 L. R. A. 265, to be lost by nonuser, and a reassertion of them is denied effect unless continued with adverse use long enough to acquire a new right. A note to the case reviews the authorities on abandonment or loss of rights of prior appropriators of water.

Wills.

That the competency of an illiterate or infirm witness to a will who attests it by mark is not dependent upon his ability to swear to or identify his mark at the time the will is offered for probate is decided in Gillis *v.* Gillis (Ga.) 30 L. R. A. 143, and want of memory or other cause of inability or unwillingness to testify to the attestation or to the testator's capacity will permit proof by competent witnesses who did not attest the will.

Disclosure of Records.

The attempt of a state court to compel a deputy collector of internal revenue to testify to communications made to him by an applicant for a retail liquor dealer's tax stamp is denied in *Re* Huttman (D. C. D. Kan.) 70 Fed. Rep. 699, because they were made with the express and understood purpose of making the record of the office, and the regulations of the commissioner of internal revenue, which have the force of an act of Congress, forbid the disclosure of the contents of the collector's records.

New Books.

"Annotations to the Code of Civil Procedure." Supplementary to Bliss & Stover's Annotated Code. By W. H. Silvernail. Albany, N. Y.; W. C. Little & Co. 1895. $2.50.

"The Taxable Transfer Act of the State of New York, with Cases and Forms." Edited by Charles H. Mills. W. C. Little & Co., Albany, N. Y. $1.25, Paper.

"Intestate Succession in the State of New York." By Daniel S. Remsen, 3d ed. New York; Baker, Voorhis, & Co. 1896. $1.75.

"The Principles of Equity and Equity Pleading." By Elias Merwin. Edited by H. C. Merwin. Houghton, Mifflin, & Co. Boston and New York. 1895. $6.

"The Law of Landlord and Tenant Applicable to the Dominion of Canada." By S. R. Clarke. Toronto: The Carswell Co. 1 vol. $10.

Whittaker's Smith on "Negligence." New edition. By J. A. Webb. The F. H. Thomas Law Book Company, St. Louis. 1 vol. $6.

Personal.

A deserved compliment to one of the most accurate and efficient reporters in the United States is paid by the following resolution lately adopted at a convention of the judges of Michigan:

"Resolved by the judges of Michigan in convention assembled, that the thanks of this association are justly due and hereby tendered our state reporter, the (Hon.) W. D. Fuller, for the prompt and efficient manner in which the decisions of our Supreme Court are reported, and especially the important feature adopted by him in preparing and arranging the valuable notes and references thereto, thus lessening and facilitating the labor of the profession, including both Bench and Bar alike."

Mr. Fuller's annotation consists of numerous notes prepared by himself from Michigan decisions. In addition to these he has in numerous cases given references to notes in

L. R. A. The work he has done on his annotation has been far beyond any pecuniary compensation received by him, and has been largely a labor of love, which it must be pleasant to have so fully appreciated by the judges of his state.

The Humorous Side.

THE JUDICIAL DICTIONARY.—The Century, Standard, International, and Encyclopædic Dictionaries are steadily falling behind the courts. One recent decision establishes that when a man is hung by a mob it is an "accident." A child whose parents are living has also been declared by an eminent judge to be an "orphan;" and when life insurance was taken by a man while unmarried, it was judicially declared to have been "effected by a husband." In addition to these, an unmarried woman has been declared by our highest court to be a "single man."

BLAMING THE BULL.—An English court decides that a railroad company is not liable for the escape of a bull from a car, because "it is found in the strongest terms that the escape of the bullock was wholly attributable to the efforts and exertions of the animal itself." This shows that when a bull becomes discontented and breaks from his boundaries, it makes trouble. The first name of the bull in this case is not explicitly mentioned, but it is supposed to be John.

SUSPICIOUS OF NEWARK.—Some years ago a court, speaking about a deceased canvasser for insurance, said there was proof "that in an interview with the president, the deceased remarked that he could procure a great number of applications in Newark, to which the president in substance replied that he must be cautious, as the company did not wish to insure insane persons, or persons of habits of intoxication."

URGING THE JURY TO BE IMPARTIAL.—In a life insurance case a Federal judge recently charged the jury as follows:

"Now, gentlemen of the jury, I try to close my eyes, as well as I can, to the fact that a woman and child have any interest whatever in the result of a controversy when it is brought into court. I cannot always do it. I don't suppose you can. It is not expected. If a man can do that, he is no better than a brute. He is as bad as the heathen is supposed to be, and worse than the horse thief is thought to be. If he close his eyes to that fact, lose all sense of decency and self-respect, he would not be fit for a juror. But, so far as it is possible for you to do that, you do so, and decide the case precisely as you would if it was between man and man, or between a woman and a woman." And yet the insurance company took an exception to the charge.

A BAD BED.—"That a bed is not ordinarily a dangerous instrument is of no moment in this case," said the court in holding that the seller of a folding bed falsely represented to be safe is liable to any person who may be injured while using it. In this case, it was warranted to "stand upright against the wall during the daytime," and this it appears it would do. But the trouble arose over a further warranty that at night when the front part was lowered "the legs of the same would automatically descend and securely lock themselves." The complaint of an injured lady alleged "that being about to retire for the night, and the legs thereof being apparently secure, she in the course of her preparations for retiring leaned with her left arm upon the side of the bed, and while she was in this attitude the heavy framework of the bed fell forward and downward upon the horizontal part and upon the plaintiff, breaking her arm and otherwise injuring her to her damage." Consequently the seller of this trap was held liable to be mulcted in damages because of its vicious propensities.

COMMON-LAW PRIVILEGES. — A quotation from "The Case of Heresy," 7 Coke, 56, says: "The Archbishop and other Bishops, and other the clergy, at a general synod or convocation, might convict an heretic by the common law. But for this, that it was troublesome to call a convocation of the whole province, it was ordained by the statute of 2 Hen. IV., chap. 15, that every Bishop in his diocese might convict heretics. And if the Sheriff was present, he might deliver the party convict to be burnt, without any writ *de hæretico comburendo;* but if the sheriff be absent, or if he be to be burnt in another county, then there ought to be a writ *de hæretico comburendo.*" This revered common-law authority should not be disregarded. Nothing less than the formality of a writ *de hæretico comburendo* will satisfy a heretic when he is to be taken to another county to be burned.